POWERS CONFERRED UPON CONGRESS BY THE SIXTEENTH AMENDMENT. — In the recent case of *Evans* v. *Gore* [1] the Supreme Court of the United States decided that by taxing the salary of a federal judge as a part of his income, Congress was in effect reducing his salary and thus violating Art. III, § 1, of the Constitution.[2] Admitting for the present purpose that such a tax really is a reduction of salary,[3] even so it would seem that the words of the amendment [4] giving power to tax "incomes, from whatever source derived," are sufficiently strong to overrule *pro tanto* the provisions of Art. III, § 1. But, two years ago, the court had already suggested that the amendment in no way extended the subjects open to federal taxation.[5] The decision in *Evans* v. *Gore* affirms that view, and virtually strikes from the amendment the words "from whatever source derived."

The court seeks to support its position by finding in the history of the proposal and adoption of the amendment, proof that it was intended to serve the *sole* purpose of enabling Congress to levy a direct tax without apportionment according to population.[6] It is true that *one* of the main purposes in framing the amendment was, as the court says, to remove this obstacle to an income tax raised by the *Pollock* case.[7] But there existed other obstacles as well. It had been objected that Congress could not tax the income from state and municipal bonds,[8] nor the salaries of state officials,[9] nor the salaries of federal judges,[10] this last being the exact question before the court. It is probable that the amendment was intended to remove these obstacles as well, and that it was for this express purpose that the words "from whatever source derived" were *inserted*.[11] Such seems to be the opinion of the senator who introduced the amendment.[12] And even though it may not be clear that the intent was other than that found by the court, at least it may be said that the court's view is not sufficiently supported by the facts to bear the great weight attached to it.

---

[1] 40 Sup. Ct. Rep. 550 (1920). See RECENT CASES, p. 85, *infra*.

[2] "The Judges . . . shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office."

[3] The dissenting opinion points out that a tax on the judge's income reduces his assets no more than any other tax. Evans *v.* Gore, 40 Sup. Ct. Rep. 550, 557.

[4] The full text of the Sixteenth Amendment is: "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration."

[5] Peck *v.* Lowe, 247 U. S. 165 (1918).

[6] See Evans *v.* Gore, *supra*, 555, 556.

[7] Pollock *v.* Farmers Loan & Trust Co., 157 U. S. 429 (1895). One of the holdings of this case was that an income tax, not laid in proportion to the census, violated Art. II, sec. 9, cl. 4, of the Constitution.

[8] *Ibid.*, *supra*.

[9] Collector *v.* Day, 11 Wall. (U. S.) 113 (1870).

[10] Letter of Chief Justice Taney, 157 U. S. 701 (1862).

[11] The second form in which the amendment was proposed was: "The Congress shall have power to lay and collect direct taxes on incomes without apportionment among the several states according to population." 44 CONG. REC. 3377.

The amendment next appeared in its final form. See note 4, *supra*. Comparison shows that the two significant changes were: first, the omission of the word "direct"; second, the insertion of the words "from whatever source derived." Neither of these changes are consistent with the view that the sole purpose of the amendment was to enable Congress to lay a direct tax without apportionment.

[12] Senator Brown. 45 CONG. REC. 2246.

It is possible that the court felt that if it gave full force to the words of the amendment in the matter of the salaries of the judges, it would be difficult to refuse them that force in the matter of income derived from state and municipal bonds. The court might well hesitate to commit itself to the latter, for, apart from its legal aspect, such a decision would be of striking significance in the financial and economic world.[13] To avoid this difficulty an opinion was given indicating that the words "from whatever source derived" are of no force at all, because foreign to the immediate purpose of the amendment.

It is suggested that a sounder solution of the problem can be found in the principle which requires express terms to effect startling changes, and denies that such changes can be introduced by the mere force of general language.[14] On this principle it would be hard to say that the change that would result from compelling federal judges to pay an income tax on their salaries could be termed startling and revolutionary. Such a change would not suddenly expose the judiciary to the tyranny of the Congress.[15] On the other hand, if the question arises whether the amendment gives Congress the power to tax income derived from state and municipal bonds, there would be good ground for holding that it did not. For it has been held repeatedly that Congress cannot levy such taxes,[16] and that the states are equally powerless to tax federal instrumentalities.[17] Furthermore, these decisions rest on no express words of the Constitution, but upon the very base and frame of our government as set forth in that instrument.[18] To interfere with that frame might well be held a startling and revolutionary change. This view makes it possible to limit the effect of the amendment without an extreme disregard of its literal meaning.

THE SEVENTH AMENDMENT AND PARTIAL NEW TRIALS. — The agitation for procedural reform and in some measure its realization make it pertinent to inquire how far the Seventh Amendment of the Federal Constitution, guaranteeing the right to jury trial,[1] may prove a stumbling-block in the way of such progress. Though the Seventh Amendment

[13] Exemption from taxation puts a premium on state and municipal bonds, thus forcing up the rate of interest at which railroads and other industrial organizations can borrow.

[14] Cope *v.* Doherty, 2 DeG. & J. 614 (1858); Kneil *v.* Egleston, 140 Mass. 202 (1885). See State *v.* Brown, 71 W. Va. 519, 523, 77 S. E. 243, 245 (1885); Woolridge *v.* M'Kenna, 8 Fed. 650, 659 (1881).

[15] The power to levy a general income tax, which would incidentally include the salaries of the judges, would be but a clumsy weapon in the hands of Congress, compared to the power, already possessed, of refusing to make the necessary appropriations to pay them any salary at all.

[16] Pollock *v.* Farmers Loan & Trust Co., *supra;* United States *v.* Railway Co., 17 Wall. (U. S.) 322 (1873).

[17] M'Culloch *v.* Maryland, 4 Wheat. (U. S.) 316 (1819); Farmers Bank *v.* Minnesota, 232 U. S. 516 (1914).

[18] See Dobbins *v.* Commissioners, 16 Pet. (U. S.) 435, 447 (1842).

[1] The Seventh Amendment provides: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined, than according to the rules of common law."